

ASSEMBLY BILL

No. 1351

Introduced by Assembly Member Eggman

February 27, 2015

An act to amend Sections 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, and 1000.6 of the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1351, as introduced, Eggman. Deferred entry of judgment: pretrial diversion.

(1) Existing law allows individuals convicted of specified crimes to qualify for deferred entry of judgment. A defendant qualifies if they have no conviction for any offense involving controlled substances, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program, the defendant's record does not indicate that probation or parole has ever been revoked without being completed, and the defendant's record does not indicate that he or she has been granted diversion, deferred entry of judgment, or was convicted of a felony within 5 years prior to the alleged commission of the charged offense.

Under the existing deferred entry of judgment program, defendants can plead guilty and have entry of judgment deferred, in return for entering a drug treatment program for 18 months to 3 years. If the defendant does not perform satisfactorily in the program, does not benefit from the program, is convicted of specified crimes, or engages in criminal activity rendering them unsuitable for deferred entry of judgment, the defendant's guilty plea is entered and the court proceeds

to schedule a sentencing hearing. If the defendant completes the program, the criminal charges are dismissed. Existing law allows the presiding judge of the superior court, with the district attorney and public defender, to establish a pretrial diversion drug program.

(2) This bill would change the deferred entry of judgment program into a pretrial diversion program. Under the pretrial diversion program created by this bill, a defendant qualifies if they have no prior conviction for any offense involving controlled substances other than the offenses that qualify for diversion, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program and the defendant has no prior felony conviction for a serious or violent felony.

Under the pretrial diversion program created by this bill, a qualifying defendant would not enter a guilty plea, but instead would suspend the proceedings in order to enter a drug treatment program for 6 months to one year. If the defendant does not perform satisfactorily in the program or is convicted of specified crimes, the court would terminate the program and the criminal proceedings would be reinstated. If the defendant completes the program, the criminal charges would be dismissed.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1000 of the Penal Code is amended to
2 read:
3 1000. (a) This chapter shall apply whenever a case is before
4 any court upon an accusatory pleading for a violation of Section
5 11350, 11357, 11364, or 11365, paragraph (2) of subdivision (b)
6 of Section 11375, Section 11377, or Section 11550 of the Health
7 and Safety Code, or subdivision (b) of Section 23222 of the Vehicle
8 Code, or Section 11358 of the Health and Safety Code if the
9 marijuana planted, cultivated, harvested, dried, or processed is for
10 personal use, or Section 11368 of the Health and Safety Code if
11 the narcotic drug was secured by a fictitious prescription and is
12 for the personal use of the defendant and was not sold or furnished
13 to another, or subdivision (d) of Section 653f if the solicitation
14 was for acts directed to personal use only, or Section 381 or

subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no *prior* conviction for any offense involving controlled substances ~~prior to the alleged commission of the charged offense~~; *other than the offenses listed in this subdivision.*

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

~~(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.~~

~~(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.~~

~~(6)~~
(4) The defendant has no prior ~~felony~~ conviction ~~within five years prior to the alleged commission of the charged offense~~; *for a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5.*

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to ~~(6)~~; (4), inclusive, of subdivision (a) apply to the defendant. ~~Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the superior court, or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges.~~ If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for ~~deferred entry~~ *pretrial diversion* of judgment at the arraignment. If the defendant is found ineligible for ~~deferred entry~~

1 ~~of judgment~~, *pretrial diversion*, the prosecuting attorney shall file
2 with the court a declaration in writing or state for the record the
3 grounds upon which the determination is based, and shall make
4 this information available to the defendant and his or her attorney.
5 The sole remedy of a defendant who is found ineligible for ~~deferred~~
6 ~~entry of judgment~~ *pretrial diversion* is a postconviction appeal.

7 (c) All referrals for ~~deferred entry of judgment~~ *pretrial diversion*
8 granted by the court pursuant to this chapter shall be made only
9 to programs that have been certified by the county drug program
10 administrator pursuant to Chapter 1.5 (commencing with Section
11 1211) of Title 8, or to programs that provide services at no cost to
12 the participant and have been deemed by the court and the county
13 drug program administrator to be credible and effective. The
14 defendant may request to be referred to a program in any county,
15 as long as that program meets the criteria set forth in this
16 subdivision.

17 (d) ~~Deferred entry of judgment~~ *Pretrial diversion* for a *an*
18 *alleged* violation of Section 11368 of the Health and Safety Code
19 shall not prohibit any administrative agency from taking
20 disciplinary action against a licensee or from denying a license.
21 Nothing in this subdivision shall be construed to expand or restrict
22 the provisions of Section 1000.4.

23 (e) Any defendant who is participating in a program referred to
24 in this section may be required to undergo analysis of his or her
25 urine for the purpose of testing for the presence of any drug as part
26 of the program. However, urine analysis results shall not be
27 admissible as a basis for any new criminal prosecution or
28 proceeding.

29 SEC. 2. Section 1000.1 of the Penal Code is amended to read:

30 1000.1. (a) If the prosecuting attorney determines that this
31 chapter may be applicable to the defendant, he or she shall advise
32 the defendant and his or her attorney in writing of that
33 determination. This notification shall include all of the following:

34 (1) A full description of the procedures for ~~deferred entry of~~
35 ~~judgment~~ *pretrial diversion*.

36 (2) A general explanation of the roles and authorities of the
37 probation department, the prosecuting attorney, the program, and
38 the court in the process.

39 (3) A clear statement that in lieu of trial, the court may grant
40 ~~deferred entry of judgment~~ *pretrial diversion* with respect to any

1 crime specified in subdivision (a) of Section 1000 that is charged,
2 provided that the defendant ~~pleads guilty to each of these charges~~
3 ~~and waives time for the pronouncement of judgment, waive the~~
4 ~~right to a speedy trial and preliminary hearing, if applicable, and~~
5 that upon the defendant's successful completion of a program, as
6 specified in subdivision (c) of Section 1000, the positive
7 recommendation of the program authority and the motion of the
8 defendant, prosecuting attorney, the court, or the probation
9 department, but no sooner than ~~18~~ six months and no later than
10 ~~three years~~ one year from the date of the defendant's referral to
11 the program, the court shall dismiss the charge or charges against
12 the defendant.

13 (4) A clear statement that upon any failure of treatment or
14 condition under the program, or any circumstance specified in
15 Section 1000.3, the prosecuting attorney or the probation
16 department or the court on its own may make a motion to the court
17 ~~for entry of judgment and the court shall render a finding of guilt~~
18 ~~to the charge or charges pled, enter judgment, to terminate pretrial~~
19 ~~diversion and schedule a sentencing hearing further proceedings~~
20 as otherwise provided in this code.

21 (5) An explanation of criminal record retention and disposition
22 resulting from participation in the ~~deferred entry of judgment~~
23 ~~pretrial diversion~~ program and the defendant's rights relative to
24 answering questions about his or her arrest and deferred entry of
25 judgment following successful completion of the program.

26 (b) If the defendant consents and waives his or her right to a
27 speedy trial or a speedy preliminary hearing, the court may refer
28 the case to the probation department or the court may summarily
29 ~~grant deferred entry of judgment if the defendant pleads guilty to~~
30 ~~the charge or charges and waives time for the pronouncement of~~
31 ~~judgment.~~ *pretrial diversion*. When directed by the court, the
32 probation department shall make an investigation and take into
33 consideration the defendant's age, employment and service records,
34 educational background, community and family ties, prior
35 controlled substance use, treatment history, if any, demonstrable
36 motivation, and other mitigating factors in determining whether
37 the defendant is a person who would be benefited by education,
38 treatment, or rehabilitation. The probation department shall also
39 determine which programs the defendant would benefit from and
40 which programs would accept the defendant. The probation

1 department shall report its findings and recommendations to the
2 court. The court shall make the final determination regarding
3 education, treatment, or rehabilitation for the defendant. If the
4 court determines that it is appropriate, the court shall grant ~~deferred~~
5 ~~entry of judgment~~ *pretrial diversion* if the defendant ~~pleads guilty~~
6 ~~to the charge or charges and waives time for the pronouncement~~
7 ~~of judgment.~~ *waives the right to a speedy trial and to a speedy*
8 *preliminary hearing, if applicable.*

9 (c) (1) No statement, or any information procured therefrom,
10 made by the defendant to any probation officer or drug treatment
11 worker, that is made during the course of any investigation
12 conducted by the probation department or treatment program
13 pursuant to subdivision (b), and prior to the reporting of the
14 probation department's findings and recommendations to the court,
15 shall be admissible in any action or proceeding brought subsequent
16 to the investigation.

17 ~~No~~
18 (2) *No* statement, or any information procured therefrom, with
19 respect to the specific offense with which the defendant is charged,
20 that is made to any probation officer or drug program worker
21 subsequent to the granting of ~~deferred entry of judgment, pretrial~~
22 ~~diversion~~ shall be admissible in any action or ~~proceeding, including~~
23 ~~a sentencing hearing, proceeding.~~

24 (d) A defendant's ~~plea of guilty participation in pretrial~~
25 ~~diversion~~ pursuant to this chapter shall not constitute a conviction
26 ~~or an admission of guilt for any purpose unless a judgment of~~
27 ~~guilty is entered pursuant to Section 1000.3, purpose.~~

28 SEC. 3. Section 1000.2 of the Penal Code is amended to read:

29 1000.2. (a) The court shall hold a hearing and, after
30 consideration of any information relevant to its decision, shall
31 determine if the defendant consents to further proceedings under
32 this chapter and if the defendant should be granted ~~deferred entry~~
33 ~~of judgment, pretrial diversion.~~ If the court does not deem the
34 defendant a person who would be benefited by ~~deferred entry of~~
35 ~~judgment, or if the defendant does not consent to participate,~~
36 *participate in pretrial diversion* the proceedings shall continue as
37 in any other case.

38 ~~At~~

39 (b) *At* the time that ~~deferred entry of judgment pretrial diversion~~
40 is granted, any bail bond or undertaking, or deposit in lieu thereof,

1 on file by or on behalf of the defendant shall be exonerated, and
2 the court shall enter an order so directing.

3 ~~The~~

4 ~~(c) The period during which deferred entry of judgment pretrial~~
5 ~~diversion is granted shall be for no less than 18 six months nor~~
6 ~~longer than three years. one year. Progress reports shall be filed~~
7 ~~by the probation department with the court as directed by the court.~~

8 SEC. 4. Section 1000.3 of the Penal Code is amended to read:

9 1000.3. (a) If it appears to the prosecuting attorney, the court,
10 or the probation department that the defendant is performing
11 unsatisfactorily in the assigned program, ~~or that the defendant is~~
12 ~~not benefiting from education, treatment, or rehabilitation,~~ or that
13 the defendant is convicted of a misdemeanor ~~or an offense~~ that reflects
14 the defendant's propensity for violence, or the defendant is
15 convicted of a felony, ~~or the defendant has engaged in criminal~~
16 ~~conduct rendering him or her unsuitable for deferred entry of~~
17 ~~judgment,~~ the prosecuting attorney, the court on its own, or the
18 probation department may make a motion for ~~entry of judgment.~~
19 ~~termination from pretrial diversion.~~

20 ~~After~~

21 ~~(b) After notice to the defendant, the court shall hold a hearing~~
22 ~~to determine whether judgment should be entered. pretrial~~
23 ~~diversion shall be terminated.~~

24 ~~If~~

25 ~~(c) If the court finds that the defendant is not performing~~
26 ~~satisfactorily in the assigned program, or that the defendant is not~~
27 ~~benefiting from education, treatment, or rehabilitation,~~ or the court
28 finds that the defendant has been convicted of a crime as indicated
29 above, ~~or that the defendant has engaged in criminal conduct~~
30 ~~rendering him or her unsuitable for deferred entry of judgment, in~~
31 ~~subdivision (b) the court shall render a finding of guilt to the charge~~
32 ~~or charges pled, enter judgment, reinstate the criminal charge or~~
33 ~~charges and schedule a sentencing hearing the matter for further~~
34 ~~proceedings as otherwise provided in this code.~~

35 ~~If~~

36 ~~(d) If the defendant has performed satisfactorily during the~~
37 ~~period in which deferred entry of judgment was granted, completed~~
38 ~~pretrial diversion, at the end of that period, the criminal charge or~~
39 ~~charges shall be dismissed.~~

40 ~~Prior~~

1 (e) *Prior to dismissing the charge or charges or ~~rendering a~~*
2 *~~finding of guilt and entering judgment, terminating pretrial~~*
3 *~~diversion~~*, the court shall consider the defendant's ability to pay
4 and whether the defendant has paid a diversion restitution fee
5 pursuant to Section 1001.90, if ordered, and has met his or her
6 financial obligation to the program, if any. As provided in Section
7 1203.1b, the defendant shall reimburse the probation department
8 for the reasonable cost of any program investigation or progress
9 report filed with the court as directed pursuant to Sections 1000.1
10 and 1000.2.

11 SEC. 5. Section 1000.4 of the Penal Code is amended to read:

12 1000.4. (a) Any record filed with the Department of Justice
13 shall indicate the disposition in those cases ~~deferred~~ *referred to*
14 *pretrial diversion* pursuant to this chapter. Upon successful
15 completion of a ~~deferred entry of judgment pretrial diversion~~
16 program, the arrest upon which the ~~judgment was deferred~~
17 *defendant was diverted* shall be deemed to have never occurred.
18 The defendant may indicate in response to any question concerning
19 his or her prior criminal record that he or she was not arrested or
20 granted ~~deferred entry of judgment pretrial diversion~~ for the
21 offense, except as specified in subdivision (b). A record pertaining
22 to an arrest resulting in successful completion of a ~~deferred entry~~
23 ~~of judgment pretrial diversion~~ program shall not, without the
24 defendant's consent, be used in any way that could result in the
25 denial of any employment, benefit, license, or certificate.

26 (b) The defendant shall be advised that, regardless of his or her
27 successful completion of the ~~deferred entry of judgment pretrial~~
28 *diversion* program, the arrest upon which ~~the judgment was~~
29 *deferred pretrial diversion was based* may be disclosed by the
30 Department of Justice in response to any peace officer application
31 request and that, notwithstanding subdivision (a), this section does
32 not relieve him or her of the obligation to disclose the arrest in
33 response to any direct question contained in any questionnaire or
34 application for a position as a peace officer, as defined in Section
35 830.

36 SEC. 6. Section 1000.5 of the Penal Code is amended to read:

37 1000.5. (a) The presiding judge of the superior court, or a
38 judge designated by the presiding judge, together with the district
39 attorney and the public defender, may agree in writing to establish
40 and conduct a preguilty plea drug court program pursuant to the

provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a ~~deferred entry of judgment~~ *pretrial diversion* program as provided in this chapter.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

SEC. 7. Section 1000.6 of the Penal Code is amended to read:

1000.6. (a) Where a person is participating in a ~~deferred entry of judgment~~ *pretrial diversion* program or a preguilty plea program pursuant to this chapter, the person ~~may also participate in a licensed methadone~~ *shall be allowed, under the direction of a licensed health care practitioner, to use medications including, but not limited to, methadone, buprenorphine, or levoalphacetylmethadol (LAAM) program to treat substance use disorders if the following conditions are met:*

(1) ~~The sheriff allows a methadone program to operate in the county jail.~~

(2) ~~The participant allows release of his or her medical records to the court presiding over the participant's preguilty plea or deferred entry pretrial diversion program for the limited purpose~~

1 of determining whether or not the participant is ~~duly enrolled in~~
2 ~~the licensed methadone or LAAM program using such medications~~
3 *under the direction of a licensed health care practitioner* and is
4 in compliance with ~~deferred entry~~ *the pretrial diversion* or preguilty
5 plea program rules.

6 (b) If the conditions specified in ~~paragraphs (1) and (2) of~~
7 subdivision (a) are met, ~~participation in a methadone or LAAM~~
8 ~~treatment program using medications to treat substance use~~
9 *disorders* shall not be the sole reason for exclusion from a ~~deferred~~
10 ~~entry pretrial diversion~~ or preguilty plea program. A ~~methadone~~
11 ~~or LAAM~~ patient who *uses medications to treat substance use*
12 *disorders* and participates in a preguilty *plea* or ~~deferred entry~~
13 *pretrial diversion* program shall comply with all court program
14 rules.

15 (c) A person who is participating in a ~~deferred entry of judgment~~
16 *pretrial diversion* program or preguilty plea program pursuant to
17 this chapter who ~~participates in a licensed methadone or LAAM~~
18 ~~program uses medications to treat substance use disorders~~ shall
19 present to the court a declaration from ~~the director of the methadone~~
20 ~~or LAAM program, or the director's~~ *their health care practitioner,*
21 *or their health care practitioner's* authorized representative, that
22 the person is currently ~~enrolled and in good standing in the~~
23 ~~program.~~ *under their care.*

24 (d) Urinalysis results that only establish that a person described
25 in this section has ingested ~~or taken the methadone administered~~
26 ~~or prescribed by a licensed methadone or LAAM program~~
27 *medication duly prescribed to that person by his or her physician*
28 *or psychiatrist, or medications used to treat substance use*
29 *disorders*, shall not be considered a violation of the terms of the
30 ~~deferred entry of judgment pretrial diversion~~ or preguilty plea
31 program under this chapter.

32 (e) Except as provided in subdivisions (a) to (d), inclusive, this
33 section shall not be interpreted to amend any provisions governing
34 ~~deferred entry and diversion~~ programs.